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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/807,388	03/24/2004	Theodore Rappaport	WV00015 CP3	3327
24273	7590	06/10/2008		
MOTOROLA, INC 1303 EAST ALGONQUIN ROAD IL01/3RD SCHAUMBURG, IL 60196				
EXAMINER				
COLBERT, ELLA				
ART UNIT		PAPER NUMBER		
3696				
NOTIFICATION DATE		DELIVERY MODE		
06/10/2008		ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

AP1099@motorola.com  
Docketing.Schaumburg@motorola.com

### Office Action Summary

**Application No.**

10/807,388

**Applicant(s)**

RAPPAPORT ET AL.

**Examiner**

Ella Colbert

**Art Unit**

3696

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 26 March 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 13-129 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 13-129 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/CDC)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_
- Paper No(s)/Mail Date \_\_\_\_\_

### DETAILED ACTION

1. Claims 1-12 were rejected as pending. Claims 1 and 4 have been amended and a terminal disclaimer has been filed in the communication of 2/14/08 entered as Response to Non-Final Rejection.
2. The rejections of claims 1-12 in the Office Actions of 4/05/07, 12/31/07, and 2/14/08 are hereby withdrawn because a preliminary amendment filed on 3/24/04 has been found where claims 1-12 were cancelled and new claims 13-129 were added.

A telephone call was made to Applicants' Attorney, Ms. Barbara R. Dautre to make an election of claims to be examined in accordance with MPEP 2173.05(n). The telephone call on June 5, 2008 did not result in an election.

### ***Claim Rejections - 35 USC § 112***

3. Claims 13-129 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants' regard as the invention.

Taken as a whole the claims recite an undue multiplicity of claims by virtue of the unreasonable number of claims presented would tend to obfuscate, confuse, and becloud the claimed invention. Because the examiner believes that in her judgment that twenty (20) claims are sufficient to properly define Applicants' invention, Applicants' are required to select certain claims, not to exceed twenty for examination on the merits of which no more than six are independent claims, See M.P.E.P. 2173.05(n). To be complete **the non-selected claims must be cancelled** or the Applicant(s) must present appropriate arguments as to why the above rejection is in error. Note most

patents (80%) have less than twenty claims while patents in excess of 100 claims are less than 0.35 percent cent of all cases filed and thus rare (See Federal Register: October 5, 1998 (Volume 63, Number 192, Page 53507). Note also the new excess claim fees effective 12/8/04 as evidence of what is considered to be unreasonable.

It is further noted that it would appear that a multiplicity of inventions also appear to be involved and the Applicants' are requested to group their selection accordingly to read on a single invention. The Applicants' should group the claims according to what they believe to be distinct inventions that may be restricted in a subsequent action.

Applicants' are being afforded the courtesy of a written response due to the complexity of the case.

"Applicants' should be allowed reasonable latitude in stating their claims in regard to number and phraseology employed. The right of Applicants' freedom of choice in selecting phraseology which truly points out and defines their inventions should not be abridged. Such latitude, however, should not be extended to sanction that degree of repetition and multiplicity which beclouds definition in a maze of confusion. The rule of reason should be practiced and applied on the basis of the relevant facts and circumstances in each individual case". See *In re Flint*, 411 F.2d 1353, 1357, 162 USPQ 228, 231 (CCPA 1969).

#### **Inquiries**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ella Colbert whose telephone number is 571-272-6741. The examiner can normally be reached on Monday, Tuesday, and Thursday, 5:30AM-3:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dixon Thomas can be reached on 571-272-6803. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Ella Colbert/  
Primary Examiner, Art Unit 3696

June 5, 2008